

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 19-1704

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Wye Oak Room, Talbot County Community Center, 10028 Ocean Gateway, Easton, Maryland beginning at 9 a.m. on June 1, 2020, on the application of **KAREN M. FOOTNER** (the “Applicant”). The Applicant is requesting approval of a non-Critical Area variance for the purpose of constructing a portion of a 500-square-foot, one-story addition and 186-square-foot screen porch within the 20-foot side-yard setback, to be 11 feet from the property line at its closest point. The subject property (the “Property”) is a 0.433-acre improved residential parcel owned by Applicant Karen M. Footner and located at 6373 Neavitt Manor Road, Neavitt, Maryland. The Property is improved by a 1.5-story dwelling built around 1940. The Property is shown on tax map 39, grid 20 as parcel 45, and its zoning classification is Village Residential (“VR”), within the Critical Area Overlay District (“CAO”). It is bound to the northwest by the County road known as Neavitt Manor Road, and is otherwise surrounded by residential properties also in the VR zone and CAO. The area encompassing the proposed variance request is not situated within the 100-foot Critical Area buffer.

Applicant’s request is made in accordance with Chapter 190 Zoning, Article II, §190-10.2, Table II-10; and Article VII, §190-58.3 of the Talbot County Code (the “Code”). Pursuant to §190-10.2, Table II-10, a 25-foot front and rear setback is required for all structures on properties within the VR zone, along with a 20-foot side setback from other properties zoned VR, Village Mixed or Village Hamlet.

Present at the hearing were Board of Appeals members Phillip Jones, Chairman, Frank Cavanaugh, Vice-Chairman, and Paul Shortall, member. Members Louis Dorsey and Zakary

Krebeck participated remotely by teleconference pursuant to the Fourth Amended Emergency Declaration of the County Council of Talbot County, adopted May 26, 2020 (the “Emergency Declaration”), declaring a state of emergency in Talbot County expiring at midnight on June 30, 2020, recognizing the continued threat posed by COVID-19 and allowing for county board and commission meetings to include an option for participants and the public to “participate by teleconference, live streaming, or other available technology . . .”; and pursuant to Board of Appeals Resolution 20-01, passed on June 1, 2020, implementing a policy to coordinate the Talbot County Board of Appeals Rules of Procedure (the “Rules”) with the Emergency Declaration by defining the term “convene” in Rule 4 of the Rules to include Board members who choose to participate remotely by any of the methods set forth in the Emergency Declaration. Maria Brophy, Planner II and Miguel Salinas, Assistant Planning Officer, attended the hearing on behalf of Talbot County. William C. Chapman was the attorney for the Board of Appeals (the “Board”). Zachary Smith, Esq., 114 Bay Street Building C, Easton, Maryland, appeared on behalf of the Applicant. It was noted for the record that each member of the Board had individually visited the site.

The following exhibits were offered and admitted into evidence as Board’s Exhibits as indicated:

1. Application for a Non-Critical Area Variance with Applicants’ narrative as Attachment A.
2. Tax Map of subject property.
3. Notice of Public Hearing for advertising in *The Star Democrat* newspaper.
4. Newspaper Confirmation.
5. Notice of Public Hearing and Adjacent Property Owner List.
6. Standards for Non-Critical Area Variance with Applicant’s responses.

7. Staff Report prepared by Maria Brophy, Planner II.
8. Sign Maintenance Agreement/Sign Affidavit.
9. Authorization Letter.
10. Disclosure and Acknowledgment Form.
11. Aerial Photos.
12. Photos from Site Visit.
13. Direction to the Property
14. Site Plan of the Property prepared by Plan Ahead Drafting and Design, LLC.
15. Construction/Floor plans prepared by Plan Ahead Drafting and Design, LLC.
16. May 28, 2020 letter from Karen M. Footner to Board of Appeals.
17. Property deeds.
18. Pervious Deck Agreement.
19. Lot Coverage Sheet,

Mr. Smith said Applicant's need for a variance is the result of unfortunate timing.

Applicant bought the Property, which Mr. Smith described as a "small waterman's cottage," in 2004, knowing she would need to expand and modify the dwelling. In 2007, Applicant had plans to expand the dwelling and received a permit for the proposed expansion from the County; however, she did not have sufficient funds to do both phases of her proposed expansion, so she decided to proceed with the southernly addition at that time and delay the northerly addition.

In fall, 2019, Mr. Smith said, Applicant learned the setback requirements for the Property had changed from 10 feet to 20 feet when the new Talbot County zoning ordinance took effect. Applicant's plans for the proposed renovations were produced according to the prior setback requirements. The only choice for Applicant, Mr. Smith said, was to request a variance.

Mr. Jones read a letter from Applicant dated May 28, 2020 into the record.

The Board then considered the application. Based on the testimony, application and exhibits, upon motion and seconded, the Board approved the requested variance, by a vote of five to zero.

The Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.
2. Unique physical characteristics exist, such as unusual size or shape of the property or extraordinary topographical conditions, such that the literal enforcement of the provisions of this chapter would result in a practical difficulty or unreasonable hardship in enabling the applicant to develop or use this property. The Property is nonconforming to the minimum lot size in the VR zone (one-acre minimum) and, as stated by the Applicant, has a number of physical constraints that limit further development in any location other than what is proposed. The existing septic system and drain fields are located behind the house. The system has been in service for many years and will eventually need to be replaced. The Environmental Health Department informed Applicant that, due to the small size of the Property, the only suitable location capable of accommodating a replacement system is in the area directly behind the house. Given the amount of land that will be required to accommodate the replacement system and associated buffers, any addition off the rear of the house would necessitate otherwise unnecessary tree removal, and the removal of the existing deck and patio. In addition, the floor plan of the existing dwelling will not reasonably permit an addition off the eastern or southern sides, as any such addition would require all

guests to walk through the kitchen and/or Applicant's bedroom to access the living room. Applicant would not be able to entertain guests without guests entering more private areas of the dwelling. An addition on the southern side of the dwelling would also displace the established parking area. Further, an addition off the front of the dwelling would encroach into the setback along Neavitt Manor Road, which would disrupt the established streetscape and would not be in keeping with the distinct character of Neavitt.

3. The need for the variance is not based upon circumstances which are self-created or self-imposed. The existing dwelling was built around 1940, prior to the enactment of any zoning regulations. Applicant stated that, prior to acquiring the Property, she recognized she would need to renovate and expand the dwelling to accommodate the essentials of modern living. Although the Applicant did not have the financial resources to renovate the dwelling at that time, she understood, prior to acquiring the Property, that she would be able to perform her desired renovations and expansions under the VC zoning regulations. In 2017, Applicant hired a design professional to develop a plan to renovate and expand the dwelling, with additions off both the northern and southern sides. Construction of the first of the two additions began in 2017. Due to financial constraints, the second planned addition, off the northern side of the dwelling, was delayed until 2019. When the Applicant submitted a building permit application for the second addition in 2019, she was informed by County Planning and Zoning staff that the Property had been rezoned from the Village Center ("VC") zone to VR in

November, 2018, resulting in a required side setback change from 10 feet to 20 feet.

4. Greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance. Per the Applicant, the requested variance is not based on greater profitability nor a lack of knowledge of the regulations. Prior to obtaining the Property, Applicant recognized that she would need to enlarge the dwelling to provide an upgrade to contemporary living standards, and she checked the applicable zoning and setback regulations to ensure the renovation could be done. Applicant then purchased the Property and saved until she had the funds necessary to begin the renovation. In 2017, Applicant began developing a plan to renovate and expand the dwelling. At that time, the proposed renovation and expansion met the applicable setback requirements. Due to financial constraints, the renovation project had to be divided into two phases. The first phase began in 2017 and was completed in 2018. Applicant then saved additional funds in order to begin the second phase. However, during that time, the zoning district was changed and amended as part of the zoning ordinance update, and the side yard setback was increased. Given the small lot size and constraints identified herein, the zoning district change made it impossible for Applicant to fully implement the renovation plan without the requested variance. Applicant received her Certificate of Occupancy for phase one of the renovation on February 21, 2018. The new zoning ordinance went into effect on November 10, 2018.

5. The variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties. The proximity of the proposed renovation and addition to the side property line is consistent with the established pattern of development within the village of Neavitt. Lots within this village were created long ago, and are generally small and narrow. Most houses within the village are positioned close to the street and are often nonconforming to the property line setbacks. The requested variance follows this historic pattern of development, and will permit a reasonable and modest addition that is compatible with the established character of the village. The proposed addition, including the porch, will be 11 feet from the side property line at its closest point, which would have complied with the side yard setback under the VC zoning regulations. Applicant stated that she has a good relationship with the property owner to the north, who is the only owner who could conceivably be impacted by the proposed variance. There will still be 100 feet between the two houses after the addition is complete.
6. The variance shall not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. The Board finds that the request is the minimum adjustment necessary to accommodate Applicant's need to update the dwelling to modern living standards. The existing dwelling has one bathroom, which is accessible only by going through Applicant's bedroom, and does not have a living room. Applicant stated that the added bathroom and living room are essential for Applicant to entertain guests. These features are not luxuries, but rather essential and customary components of a modern single-family home. The proposed size of the addition maintains the minimum dimensions that Applicant

and her design professional believe are necessary to provide for functional use.

Applicant has provided a signed Pervious Deck Agreement for the 44-square-foot rear uncovered deck addition. This will help limit the amount of new lot coverage associated with the renovation project.

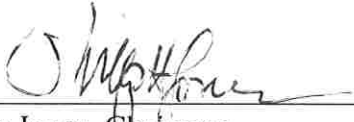
HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY
THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the Applicant, **KAREN M. FOOTNER** (Appeal No. 19-1704) is
GRANTED the requested variance consistent with the evidence presented to the Board of
Appeals, subject to the following conditions:

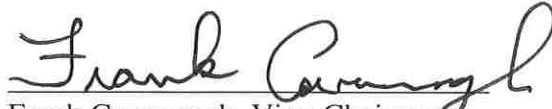
1. Inconsistencies in the lot coverage calculations must be corrected prior to submittal of the building permit application.
2. A copy of the signed Pervious Deck Agreement shall be submitted with the building permit application.
3. Applicant shall make applications to the Office of Permits and Inspections, and follow all of the rules, procedures and construction timelines as outlined regarding new construction.
4. Applicant shall commence construction on the proposed improvements within eighteen (18) months from the date of the Board of Appeals' approval.

GIVEN OVER OUR HANDS, this 7th day of July, 2020.

TALBOT COUNTY BOARD OF APPEALS



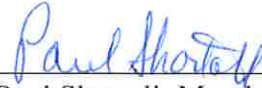
Phillip Jones, Chairman



Frank Cavanaugh, Vice-Chairman



Louis Dorsey, Member



Paul Shortall, Member



Zakary Krebeck, Member